

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute.—Industrial Dispute between the Workmen and the Management of Seethalakshmi Textiles, No. 2, Nagarthpet, Bangalore-2.

Award of the Labour Court, Bangalore—Published

Read the following papers :—

(i) Letter No. 2261—70-71, dated 15th January 1971, from Sri A. N. Sundara Murthy, Presiding Officer, Labour Court, Bangalore.

BEFORE THE PRESIDING OFFICER, LABOUR COURT, BANGALORE

Dated this 15th day of January 1971

Present :

Sri A. N. Sundara Murthy, B.A., B.L.
Presiding Officer.

Reference No. 52 of 1968

I Party—

Workmen represented by the Secretary, Bangalore Reshmi Mazdoor Sangh., Subedar Chatram Road, Bangalore-9

Vs.

II Party—

The Management of Seethalakshmi Textiles, No. 2, Nagarthpet, Bangalore-2.

Reference

Government Order No. FCL 566 LLD 68, dated 26th August 1968.

AWARD

1. The Government of Mysore in their Order No. FCL 566 LLD 68, dated 26th August 1968 have referred an industrial dispute existing between the above named parties to this court for adjudication on the points of dispute noted below :—

1. (A) Is the Management of Seethalakshmi Textiles, No. 2, Nagarthpet, Bangalore-2 justified in removing the following 12 workers from the muster rolls from 15th April 1968? (1) Smt. Muniyamma, (2) Smt. Chikkamma, (3) Smt. G. Lingamma, (4) Smt. Sidda-gangamma, (5) Smt. Venkatamma, (6) Smt. V. Chowdamma, (7) Smt. Sankamma, (8) Smt. Pushpa, (9) Smt. Rajamma, (10) Smt. Gangamma, (11) Smt. V. Rangamma, and (12) Smt. Gowramma.

(B) Is the Management of Seethalakshmi Textiles justified in locking out their factory from 13th March 1968?

2. If not are the workmen entitled to be reinstated in their former posts with continuity of service, back wages and all other consequential benefits?

2. On behalf of the first party workers claim statement is filed as follows :—The second party is a pure silk textile manufacturing concern. The service conditions of the workers in the second party were unsatisfactory. Hence they joined the Bangalore Reshme Mazdoor Sangh. On behalf of the workmen the Mazdoor Sangh placed a charter of demands. After prolonged discussions before the conciliation officer on 11th June 1965 a memorandum of settlement was arrived at between the first party and the second party. The said settlement was not fully implemented. On that account the first party had to fight for its implementation before the Payment of Wages Authority and the High Court of Mysore, Bangalore. Even now the case is pending before

the Payment of Wages Authority. After the expiry of the operation of the period of settlement, the settlement was terminated and a new charter of demands was placed on behalf of the first party. Even though the management called for mutual discussions several times no settlement was arrived at. The second party insisted that the workers should not press their demands. The first party insisted that the legitimate demands should be conceded. The second party adopted a most unreasonable attitude towards workmen and began to adopt all sorts of unfair labour practice and victimisation. The management placed bad warps on the looms and thus forced the weavers to get very low wages. The management made enormous delay in supplying wefts, colours, pagadi and designs whereby the wages of workers was reduced to nearly $\frac{1}{4}$. All the weavers were on piece rate. Some of the workmen could not bear this unfair labour practice and they voluntarily left their jobs. Most of the other weavers were unjustly and illegally retrenched from their service. On 15th April 1968 the management most unjustifiably removed the 12 first party workers from their rolls. The management unjustifiably locked out the factory. The management unjustifiably retrenched the services of many weavers and some other daily rated workers and removed some without any enquiry. But all along they were running the factory in full swing with new workers and non-members. The management continuously refused to employ or allot work to the members of the first party union whereas non-members and new comes were continuously employed by the factory. In order to harass and victimise the poor workers of the first party the management in the name of lay off refused to allot work from 13th March 1968 upto 23rd March 1968. The management put up a notice stating that the first party workers were laid off. Again from 25th March 1968 they were laid off for another period of one week. They were laid off for a further period from 8th April 1968. Even though the first party workers were going to the factory every day from 13th March 1968 to 12th April 1968 and were giving their attendance to the person present at the entrance of the factory they were not

allowed to go inside the factory. Some times even the attendance was not taken by the management. The General Secretary of the first party union wrote several letters to the management on 25th January 1968, 8th April 1968, 11th April 1968, 13th April 1968 and 23rd July 1968. None of these letters were replied. The earned wages that were due to be paid on 10th April 1968 were not paid. Even though the workers were continuously going to the factory the management with a view to deprive the workers of the wages went on making false allegations to the effect that the workers were not coming. Ramaswamy Manager, Srinivasalu and others were telling the first party workers that they should resign from their jobs, otherwise they would be removed from their service. For this the workers protested. The management simply locked the door from inside and carried on the work with the new workers and non-members. A representative of the management who attended the conciliation proceedings on 13th May, 1968 stated before the Conciliation Officer that the management removed the names of all the 12 first party workers from their muster rolls with effect from 15th April 1968. The management is not justified in removing the workers from their muster rolls for the following grounds :—

- (a) No enquiry was held and no reasonable opportunity was given to the workers before removing their names from the muster rolls. And the principles of natural justice have been violated by the Management.
- (b) No termination or removal orders were served on the workers.
- (c) The workers were victimised for having refused to toe the Management's line.
- (d) The action of the Management in removing the names from the muster rolls lacks *bona fides* and it amounts to nothing but unfair labour practice and victimisation.
- (e) The action of the Management is colourable.

- (f) Admittedly even according to the Management the workers were under lay off and the Management had no right whatsoever to remove their names from the muster rolls.
- (g) The services of the 12 workers have not been effectively terminated.
- (h) The provisions of Industrial Disputes Act, especially Section 25(E) and the Rules thereunder have been violated by the Management.
- (i) The lay off is colourable and it has been used as a weapon to victimise the workers.
- (j) Rule No. 76-A of the Industrial Disputes (Mysore) Rules, 1957 have been violated by the Management.

The Management is not at all justified in locking out the factory in respect of the 12 first party workers and carrying on the work in full swing with new workers and non-members. The management in order to force the workers not to press their demands and quit the first party union adopted these unfair methods and locked out the factory unjustifiably. All the first party workers are entitled to be reinstated in their former posts with continuity of service and back wages with all other consequential benefits.

3. On behalf of the second party rejoinder is filed as follows :—It is denied that the service conditions of the first party workers were unsatisfactory and insecure. The version that they were not given a number of statutory benefits is a faulty interpretation. The second party never insisted upon the workers not to press their demands. It is denied that the second party adopted the most unreasonable attitude towards the workers. The proceedings and the correspondence referred to in the rejoinder definitely prove that the claim is unfounded, false and untenable. The second party never adopted unfair labour practice. The supply of warps, pagadi, colours and designs and the delay if any have been

fully explained by the second party in their representation dated 15th November 1965 preferred before the Labour Officer. Some of the facts are as follows :—

1. Lack of business *vis-a-vis* almost closure.
2. Deterioration of market condition.
3. Process in Twisting section due to irregularities in attendance.
4. Most of the employees having absented themselves.
5. Want of efficiency, standard of work and output, despite warnings, etc

It is admitted as stated in para 4 of the claim statement some of the workers voluntarily left their jobs. It is not due to any unfair labour practice. It is denied that some of the workers were ill treated and harassed and ultimately retrenched. The total number of workers and other employees employed on various jobs in the second party tendered their resignations in batches and left the concern from 12th February 1968. Since there was practically no work in the twisting department 13 workers were kept idle and their wages were paid from 12th February 1968 to 11th March 1968. Since no work could be provided for them they were laid off with effect from 13th March 1968. The lay off notice was sent to the Labour and Conciliation Officer and the 13 workers of the first party were informed about lay off. Subsequent to 23rd March 1968 the lay off had to be continued and a notice was put up on 25th March 1968 informing that the lay off was continued for one more week. Out of the 13 workers one worker tendered her resignation on 25th March 1968. 12 workers of the first party failed to present themselves at the factory daily and give their attendance. Again from 1st April 1968 the lay off was extended by one more week and the intimation was sent to the Labour and Conciliation Officer. As usual the 12 workers of the first party failed to present themselves at the factory and give their attendance. Since they were

continuously absenting themselves from 25th March 1968 and onwards notices were sent to all of them on 5th April 1968 informing them that if they fail to give their attendance during lay off period on or before 8th April 1968 it would be deemed that they have terminated their own services and their names would be removed from the muster rolls which was done on 15th April 1968. These facts clearly establish that there was neither lockout nor retrenchment. It is denied that the second party was running the factory in full swing with new workers. Neither the first party workers gave attendance nor were they prevented access to the factory. The insinuations against the supervisor Srinivasa Murthy and Desai Suryaharayana are very uncharitable and unfounded and have been made for the purpose of trying to promote their otherwise unsustainable plea. The removal of the 12 first party workers as averred in para 12 of the claim statement is false. The procedure followed is in accordance with fair play and reason. The opportunities given to I Party are in conformity with equity and justice. The first party has no right whatsoever to come forward with new facts. They are not entitled for reinstatement. They are not entitled to any reliefs. It is prayed that the claims of the first party workers may be dismissed

4. The points of dispute are ordered to be the issues in this case.

5. The first point for consideration is whether the second party is justified in locking out the factory from 13th March 1968. In this case according to the second party the first party workers were laid off due to lack of business, deterioration of market conditions delay in process in twisting section due to irregularities in attendance, absence of most of the employees, want of efficiency and standard work and output despite warning notices. In this case it is contended on behalf of the second party that it had to lay off the first party workers for the above said reasons and it also had issued lay off notices to the first party workers as per Exhibits W. 8 to W. 12. The lay off is *bona fide* and

it is due to economic reasons and it was beyond the control of the second party.

6. In the course of the evidence it is also got elicited that there was no work in the twisting department. Some of the weavers left the work in batches and the cost of silk went up. Silk which is a raw material became scarce. It is also stated that one month prior to 13th March 1968 there was no work and the first party workers were paid their wages for that period even though they had no work. This fact is admitted by W.W. 1. From the facts referred to above it would be clear that it does not amount to a lockout but would be a lay off under Section 2 (kkk) of the Industrial Disputes Act. From the evidence available it is also clear that the lay off is *bona fide*. At the time of arguments on behalf of the first party workers it was conceded that the second party was justified in laying off the first party workers with effect from 13th March 1968.

7. The important point for consideration in this case is whether the second party is justified in removing the names of the 12 first party workers from the muster rolls of the second party with effect from 15th April 1968. In the course of the evidence of M.W. 1 he states that during the lay off period the first party workers did not attend the factory. In that behalf the Labour and Conciliation Officer was also notified. A copy of it was also sent to the first party workers as per Exhibit W. 14. He admits that he removed the names of the first party workers from the muster roll on 15th April 1968.

8. It is contended on behalf of the second party that during the period of lay off the first party workers should have attended the factory of the second party at the time when the attendance was being taken at 11 A.M. and 3 P.M. According to the second party a duty is cast upon the first party workers to attend the factory at the time when the attendance was taken and if they failed to do so the management would be within its rights to remove the names of the first party workers from the muster rolls.

9. The second party appears to have been under an erroneous impression that during the lay off period it was obligatory on the part of the first party workers to be present at the factory-gates at the specified time to give attendance. No provision of law in the Industrial Disputes Act was pointed out to his court on behalf of the second party to exercise such a right. Under Section 25-E (ii) of the Industrial Disputes Act if a worker does not present himself for work at the establishment at the appointed time during normal working hours at least once a day no compensation shall be paid to such a workman during the period of lay off. In 1956 I LLJ 215, the High Court of Bombay has laid down as follows relating to the rights of the parties during the period of lay off : —

“The employer has no right to dictate to the employee that he shall present himself at his office, nor is there any obligation upon the employee so to do. During the period of the lay-off the employee would be entitled to go and serve another master. The only result of his doing so would be that he would be disentitled to recovery compensation. But it is entirely a matter of his option whether he should present himself at the office of his employer and thus claim compensation or earn wages under a different employer and even though he may serve a different employer he would still have the right to be reinstated when the proper occasion arises. Therefore, the situation is clear that during the period of lay-off the employee no longer is the servant or the workman of his employer. That relationship is suspended and that relationship would only be revived when he is reinstated under the terms of the contract. It is true that the contract of employment itself has not come to an end because a certain obligation remains upon the employer and a certain right still is in the employee, the obligation to reinstate and the right to be reinstated.”

10. In 1956 I LLJ 547 it is laid down as under :—

“The obligation was that if the conditions referred to in the definition of “lay-off” exist, the employer was bound to continue the services of the employee, but was not bound to pay him full wages but compensation provided in the Act. The employer was also entitled to retrench the services of his employee, but that also he could only do provided he paid retrenchment compensation. Therefore, two options were open to the employer. Under given circumstances he could either lay off his employee, pay him lay off compensation, and when the crisis passed and the emergency ceased to exist, he had to reinstate him or rather he had to give him his full wages as an employee, the suspension of the contract having come to an end, or he could dismiss him, but unless the dismissal was for misconduct or for certain other reasons mentioned in the Act, he had to give him retrenchment compensation.”

11. In 1959 II LLJ 742 it is laid down as under :—

“It is however clear that lay off does not terminate or bring to an end the contract of employment. The employees continue to be on the muster-roll of the employer and they have to be reinstated as soon as normal working is resumed.”

“During the period of law off, the employer is not in a position to provide work and the employee cannot insist on work being provided or wages being paid to him. The employee is also not under any duty to work for his master or even to present himself for work. He has to present himself for work, if he desires to claim compensation (see Section 25-E of the Industrial Disputes Act). But he has an option in the matter. If he remains absent, he will not be entitled to compensation, but he will not lose the right,

which he possesses under the standing orders, of reinstatement when the normal working is resumed. The employer cannot insist on his attendance there is also no obligation upon him to provide work or to pay wages even if the worker presents himself for work. In order to escape liability of compensation, the employer may provide the worker with alternative employment, but the worker is not bound to accept it. If he does not accept it, he will not be entitled to claim lay off compensation, but he will not lose his right of reinstatement when the lay off ends."

From the principles laid down in the above said decisions it is clear that the employer cannot dictate to the employees to be present at the factory gate and give attendance. Even granting that the employee fails to give attendance he will only lose his right to receive compensation. It is the duty of the employer to maintain a muster roll for the laid off workmen as contemplated under Section 25-D of the Industrial Disputes Act so that the employee who presents himself at the factory at the appointed time may put his signature in the muster roll maintained by the employer under Section 25-D. The employer has no right to strike off the names of the employees who fail to appear before the factory and give attendance during the lay off period. It is the duty of the employer, after the end of the lay off period, to reinstate the laid off employees. In this case the second party has not maintained the muster roll as contemplated under Section 25-D. Further the second party was not justified in striking off the names of the first party workers even though they did not appear at the gates of the factory at the appointed hours for marking attendance. The action of the second party amounts to termination of services of the first party workers during the period of lay off. This is not justified. The first party workers are therefore entitled to be reinstated with the second party from the date when the lay off came to an end. In this case there is no evidence available to show exactly on what date the work in the twisting section was

re-started, after the lay off. It is admitted that after the lay off period was over the work in the twisting section is going on with 30 to 35 new workers. The last lay off notice is Ex. W. 12 and as per Ex. W. 12 the lay off period was extended for a further period of one week from 15th April 1968. So the lay off came to an end on 22nd April 1968. In view of these facts it is clear that the first party workers are entitled to be reinstated from the date the lay off period came to an end, i.e., on 23rd April 1968.

12. In this case there is no definite evidence as to on what dates the weekly holidays in respect of the twisting section was given during the lay off period. There is also no definite evidence available to show on what dates each of the workers of the first party presented before the second party factory during the lay off period for giving attendance and to claim lay off compensation. Hence in respect of the claim for lay off compensation it is open to the first party workers to prefer claims for computation for the lay off period by filing applications under Section 33-C (2) of the Industrial Disputes Act..

13. The next point for consideration is as to what back wages the first party workers are entitled to. According to the second party each of the workers of the first party are employed in some other weaving factories in Cubbonpet after their names were removed from the muster rolls. Ten of the first party workers are examined in this case as W. Ws. 1 to 10. They deny that they are employed in some other factories. According to them in spite of their efforts they could not get work elsewhere. The second party also has not let in any evidence to show where exactly each one of the first party workers is working. In view of these facts it would not be justified to deny the entire back wages to the first party workers. I am of opinion that if 50 per cent of back wages is awarded to the first party workers it would meet with ends of justice.

14. In the result I make an award directing the second party to reinstate all the 12 first party workers in their former posts with continuity of service and pay them 50 per cent of back wages from 23rd April 1968 till the date of reinstatement. I order the parties to bear their own costs.

(Sd.) A. N. SUNDARA MURTHY.

Presiding Officer
Labour Court, Bangalore.

15-1-1971.